

CALIFORNIA ACUPUNCTURE BOARD

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State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor



Approved December 2, 2005

ACUPUNCTURE BOARD MEETING MINUTES

August 22-23, 2005

Milton Marks Conference Center
San Francisco, California 94102-3688

Full Board Meeting - Monday, August 22, 2005

MEMBERS PRESENT

Shari Asplund, Chair
Joan C. Chang, L.Ac., Vice - Chair
Steven Tan, M.D., L.Ac
Kenny G. Cherng, L.AC
Larry Yee

MEMBERS ABSENT

Justin Tin

STAFF PRESENT

Marilyn Nielsen, Executive Officer
LaVonne Powell, Legal Counsel
Janelle Wedge, Administrative Coordinator
Nancy Molinar, Education Coordinator
Kerry Kuepper, Enforcement Coordinator
Christie Loftin, Examination Coordinator
Michele Marine, Administrative Technician

GUEST LIST ON FILE

1. Call to Order and Establishment of a Quorum (S.Asplund, Chair)

Chair, Shari Asplund, called the Acupuncture Board (Board) meeting to order at approximately 9:10 a.m. Roll was taken and a quorum was established.

2. Chair's Report – Shari Asplund

Ms. Asplund indicated the Board is still waiting for a sunset or sunrise decision. She informed members she has learned her term could be extended to one more year and indicated she will stay on to ensure quorum requirements. Ms. Asplund said her extension will last until July 1, 2006 unless more appointments are made or the Board is sunset.

3. Executive Officer's Report – Marilyn Nielsen

Ms. Nielsen pointed out that meeting attendance was low due to a rally being held at the state's capitol by the Council of Acupuncture and Oriental Medicine Associations (CAOMA) to lobby senators and the Governor to sunrise the Board.

4. Approval of May 26-27, 2005 Meeting Minutes

**LARRY YEE MOVED AND JOAN CHANG SECONDED THE MOTION TO
APPROVE THE MAY 26 – 27, 2005 MINUTES AS AMENDED.
PASSED UNANIMOUSLY.**

5. SPECIAL ORDER OF BUSINESS-REGULATORY HEARING (S.Asplund)

Amend/Add Title 16, California Code of Regulations, as follows:

(Previously noticed in California Regulatory Notice Registers #Z-05-0628-01, #Z-05-0628-02, and #Z-05-0628-03, publications date of June 8, 2005. Notice also sent to the Acupuncture Board's general mailing list):

a. Single Use Needles

Amend Sections 1399.450 and 1399.451 and Add Section 1399.454 – This proposed amendment will help the Board ensure that licensees are informed of their responsibility to follow infection control guidelines and the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases. One way of meeting this requirement and protecting the public is to amend section 1399.450 and 1399.451 which eliminates the option to use non-disposable needles and adding section 1399.454 requiring the use of single-use needles.

Ms. Asplund introduced herself as the chair of the Acupuncture Board and stated she would be presiding over this hearing. This is the time and place set for the Board to conduct a public hearing on the proposed regulatory amendments to Title 16 of the California Code of Regulations as described in the notices published in the California Regulatory Notice Register and set by mail to those on the Board's mailing list. The first proposal modifies sections 1399.450, 1399.451, and adds sections 1399.454 regarding single-use needles. The third proposal modifies sections 1399.480, .481, .482, .483, .484, .485, .486, .487, .488, .489, and .489.1 regarding continuing education. For the record, today's date is August 22, 2005, the hearing is beginning at approximately 9:15 a.m. and we have already established a quorum, so we know we have a quorum of the Board. The purpose of the hearing is to receive oral and written testimony concerning the regulatory proposal described in the hearing notices. We ask that any persons in attendance, who wish to testify, print their names on the hearing sign-in sheet at the table. The regulations must comply to six legal review standards as follows: necessity; is there demonstrated evidence that there is a need for the regulation, authority; has the legislation delegated to the Board the power to adopt this regulation, consistency; does the regulation conflict with other regulations or statutes, clarity; can the regulation be easily be understood by those affected, non-duplication; does the regulation duplicate other regulations or statutes, and reference; which statute does the regulation implement, interpret, or make specific? All testimony should address the six standards as they pertain to the regulations that are the subject of today's hearings. Before we begin, I would like to describe the procedures that will be followed. The entire hearing will be tape-recorded. Those persons who will be testifying will not be sworn in or cross-examined. Board members will consider all recommendations and objections. Responses to all recommendations or objections will be included in the final statement of reasons that is filled with the Office of Administrative Law. The Board will maintain a rule-making file of this proposed regulatory action. A record of this hearing, as well as testimony received, will become part of the rule-making file and a complete copy of the rule-making file will be available for review at the Board's office in Sacramento. To ensure fairness and that everything is completely entered into the record and to enable the Board members and the audience to hear; anyone who is giving testimony, we ask that they adhere to the following procedures: speak into the microphone at the podium and identify yourself and, if applicable, the organization you represent. State your position, whether or oppose or support the regulation at the beginning of the testimony. Oral testimony will be limited to five minutes per person and please do not repeat any testimony previously given. Any written testimony presented to this hearing is to be summarized orally. I will call those persons wishing to testify regarding sections 1399.450, 1399.451, and 1399.454 relating to single-use needles. Do we have any?

Public Comment: John Kolenda, L.Ac., Dean of the American College of Traditional Chinese Medicine (ACTCM), Good morning. There are just a few points I want to make. I am not necessarily opposed to this bill about limiting the use for only single-use needles. I do want you to consider the possibilities of those practitioners out there that may be using needles that are of higher quality than just disposable needles. I also want you to consider the increased cost that would bring to patients in the form of passing that cost on to the patients. I also want to make the point about further restricting the use of acupuncture from its traditional form. In its origins and in the way it has been practiced for thousands of years and very successfully and safely here in California for at least the last thirty years, there has never been an incident of contamination or some sort of

difficulty with the needle itself, whether it be single-use or multiple use, as long as strict scientific procedures are followed for auto-claving and sterilizing equipment. If you look at other professions, dentistry, orthopedic surgeons, nursing, there aren't any regulations saying that they need to dispose of their equipment. It would be extremely expensive if dentists had to do it all the time. In some cases it becomes very expensive for traditional acupuncturists who use very high quality equipment if they have to replace it every time they use it. So, I just want you to consider that in passing legislation or in considering this amendment to the section. In my own practice, I think there was a great relief in my patients' faces when I told them it is single-use and I think that is a very good thing to consider but at the very same time, if there are certain techniques or certain requirements of higher rate or higher quality equipment, I don't want that to be restricted from my own practice or from the practice of acupuncture here in the state of California. That's all I have to say, thank you. **Joan Chang, Vice-Chair:** How much the cost per needle in the school? **John Kolenda, L.Ac., Dean of ACTCM:** The cost per needle for single-use ranged this summer between 4-5 cents upwards of fifteen cents for single-use but you have to remember that the single-use needles are of a lesser quality than multiple use needles. Single-use needles can be more thinner and more brittle. Needles that are designed to be auto-claved are of higher quality, both of steel grade and less likely to have those deficiencies and I don't know the cost of those needles. I don't know very much about them. **Larry Yee:** Can I ask you the life of a high-grade needle? Is there a life span on that? **John Kolenda, L.Ac., Dean of ACTCM:** I don't know that scientifically. I know the expected life of a single-use needle, if you were to auto-clave it, is not to exceed five to ten uses and that comes from the manufacturers. **Joan Chang, Vice-Chair:** In ... there is many needle in very low price than four or five cents. **John Kolenda, L.Ac., Dean of ACTCM:** If you can share that information with me, I am sure the school would love that. I think what happens when you get lower in prices you also get lower quality of steel, more likely to have burrs on the needle itself, on the needle shaft. This can actually increase the needle breakage at that point. I would be concerned about quality more so than pricing with those low prices. A lot of it depends on where it is manufactured. Most needles are currently manufactured in the Orient, whether it be in Japan, China, or Hong Kong, but the quality does vary tremendously in the quality of steel. I just want to emphasize again that if you follow scientific method and sterilize your needles the incident is practically nil. It is very, very low and has demonstrated to be that, not only here in California, but worldwide as well. **Shari Asplund, Chair:** Are you aware of any incidents where those procedures were not followed on non-single and single? **John Kolenda, L.Ac., Dean of ACTCM:** Not in California. None in California. **Kenny Cherng:** You also mention about some... Can you give us an example? **John Kolenda, L.Ac., Dean of ACTCM:** Yeah, I think mostly the use, techniques that maybe a deeper insertions or through and through technique is going to be more difficult to find a needle that are replaceable. Or a Plum Blossom, which is a hammer or tapping technique. There are other instruments that may be used that really require a higher quality. I think if you, what I am concerned about and this is really the gut feeling I have, what I am mostly concerned about is getting to limit the ability to use different techniques, healing techniques, for acupuncturists. As you vary away from multi-use needles, limiting the ability to use manipulation for each treatment that you do and that concerns me because I don't want to limit the scope of the practice of acupuncture. I want to keep it as wide as it was designed to be from its origins. **Dr. Steven Tan:** I have one question. Other than the sterilization aspect of single-use needles, obviously control for infection is... with the needles that you are proposing, how would you account for safety concerns; such as, degradation of that needle, various cycles of sterilization used? **John Kolenda, L.Ac., Dean of ACTCM:** There is quality control for each needle that's used for those people that reuse needles; such as, passing cotton. Actually, when each needle is cleaned, you pass a clean piece of cotton to wipe each needle down. If it has burrs it will actually catch on to the cotton itself. I don't know of anyone who uses the microscopic technique to test the quality of each needle. I don't know of there being any incident, at least in the last thirty years in California, of any problem with needle breakage or otherwise. Thank you. **Jasmine Oberste, L.Ac.:** I just had a question first, if this item would restrict using the reusable quality needles a single time? Because they don't come sterilized, you have to sterilize them, but they are a higher quality needle. So, I, can I get the answer to that question? **LaVonne Powell, Legal Counsel:** No, our requirement is that "shall use labeled for single-use only" in pursuant to federal law. **Jasmine Oberste, L.Ac.:** So, personally, I have learned a style of acupuncture that uses reusable needles and I feel there is a really big difference in the quality and what I can feel I am doing with needling technique. So, as a absolute minimum, I would request that we would be able to use reusable quality

needles and auto-clave them with western medical standard which is proven to be an effective sterilization technique. I think the main issues here, first of all, it is proven to work and acupuncturists handle, pretty much know blood and body tissue where other professions; such as, surgeons and dentists use surgical auto-clave and they are proven to work as sterilizing methods. Anyway, I did speak with a dentist, asking what the procedures where to monitor their auto-calves and he told me that they actually send their biological indicators into the company that they order them from and then they get a form back from that company stating that the auto-calve is working properly and then they keep those on hand. So, I thought that would be an excellent way, it seems like it would be a good idea for the Acupuncture Board to be monitoring if peoples' auto-calves were working and that would show that we are protecting the public which is, I believe, what the Acupuncture Board wants to be doing and we as acupuncturists also. So, I think it might be a good idea to have us register records of some kind and one way of doing that would be to have an outside company that provides biological indicators to be sending us fact records that we can keep on file. And it is the western standard that has been proven to work as a sterilization method and I wonder why there would be a restriction on this, other than peoples' fear. I know when I have patients that have been concerned about reusable needles, when I talk with them about dentistry and surgery, that they don't through away their tools, they sterilize them and explain the process and the temperature the pressure and timing and what goes on, I haven't had a single patient not want to get treated once they understand. In some ways it brings more awareness to the procedure being clean because clean means sterile, because we are paying attention to the whole process. So, I think my first preference is that we could be able to continue to use reusable needles with an auto-clave as it is now. But that the Acupuncture Board would have some kind of registry to ensure that people who are using auto-claves are using them correctly and safely. But if that doesn't go through, my second preference would definitely be to be able to use reusable quality needles, whichever is slightly more expensive, they are a much better quality needle and if necessary we only use them one time. But it would be required that we would have to sterilize them first because they come in packages, they don't come individually sterilized. So, that would be my personal two preferences and I know I speak for a number of other acupuncturists that weren't able to be here today. Thank you. **Kenneth Rosenberg, L.Ac.:** I also was taught a classical method of acupuncture that really strives to maintain a link to the original intelligence of this medicine. Ancient healing techniques is what we use and quality of needle is our main issue. We have tried multiple brand single-use needles of varying quality and none of them had the integrity to hold up to the needling techniques. And that's really our issue. And this ancient needle style is something that is lost. It is very rare to find practitioners still practicing and teaching it and we really want to keep it alive. And you see patients get amazing results using these techniques and that is really what it comes down to for us. We are using surgical auto-claves. We handle a lot less blood and tissue than medical professions that are using the typical auto-claves. It's very time consuming for us to go through and check all of our needles and make sure there are no burrs and they still have their integrity and we sterilize them the first thing after they have been used in a patient. We sterilize them and then we check them for their quality and since we've been touching them, we sterilize them again and then we reuse them in patients. It is so time consuming so we are not the kind of people who are looking for short cuts or looking for ways to save money. It really is about a quality issue for us. So, I would hope the worst case scenario that would come out of this is that you would just require more documentation from people. If you want to put us on a list or something – hey, these are the people using these kinds of needles and here is the criteria you must follow – that's fine, but I just really hope that it is still an option for us to maintain this and that's it. Thank you for listening. **Shari Asplund, Chair:** Is there anyone else who wishes to testify? Since there is no one else, the hearing is now closed.

The Board members discussed concerns that may arise regarding the use of single-use needles. Joan Chang, Vice-Chair, expressed concern over using single-use needles that are packaged in large quantities, such as a five pack. She wanted to know if an acupuncturist opens a five pack but only uses two of the five needles, what would the licensee be required to do with the remaining needles. LaVonne Powell, Legal Counsel, told members they do not want to regulate to that degree and advised the Board to rely on the training and judgement of the licensees. Marilyn Nielsen, Executive Officer, added that licensees are still required to take the clean needle technique course in which they are taught adequate clean field techniques. Members talked about the possibility of an acupuncturist using higher quality reusable needles only once to perform certain

procedures. Marilyn Nielsen, Executive Officer, reminded Board members the issue regarding the single-use needles came up in the Little Hoover Commission (LHC) report where the LHC recommended the Board pursue defining single-use needles only to comply with the federal labeling requirements. In response to LHC recommendation, the Board gave a survey to its licensees and 98% of one ethnic group and 100% of the other two ethnic groups responded they already use disposable needles. She stated the response to the Board's survey prompted no action at that time because it was felt the educational requirements were adequate. However, Ms. Nielsen said, when the LHC recommendation went to the Joint Committee, the Joint Committee became adamant and demanded single-use needles be required by the Board. She concluded by saying this is an emergency regulation that has been filed, in compliance of the Joint Committee, with the Office of Administrative Law (OAL). She clarified, emergency regulations, unlike regular regulations, are actually approved by OAL and become effective once filed with the Secretary of the State making this regulation already law.

**JOAN CHANG MOVED AND STEVEN TAN SECONDED A MOTION TO ADOPT SECTIONS 1399.450, 1399.451, AND 1399.454 AS NOTICED WITH OFFICE OF ADMINISTRATIVE LAW AND PROCEED WITH THE 15- DAY AMENDMENT TO SECTIONS 1399.434 AND 1399.436 TO REFERENCE THE SINGLE-USE NEEDLE AND THE CLEAN NEEDLE TECHNIQUE REQUIREMENT.
PASSED UNANIMOUSLY**

b. Citation and Fine

1. **Amend Section 1399.465** – This proposed amendment would increase the amount of an administrative fine to \$5000.00. The proposed language would amend section 1399.465 of Division 13.7 of Title 16, which would allow the board to impose a civil penalty between \$2,501 and \$5,000 where exceptional circumstances were present. The enhanced civil penalty would be appropriate where a violation has an immediate relationship to the health and safety of another person, the cited person has a history of two or more prior citations of the same or similar violations, the citation involves a multiple violation that demonstrates a willful disregard of the law, or the citation involves a violation or violations perpetrated against a senior citizen or disabled person.

PUBLIC COMMENT: No comment.

**STEVEN TAN MOVED AND LARRY YEE SECONDED THE MOTION TO ADOPT AS NOTICED WITH OFFICE OF ADMINISTRATIVE LAW.
PASSED UNANIMOUSLY**

c. Continuing Education

1. **Amend Sections 1399.480, 1399.481, 1399.482, 1399.483, 1399.484, 1399.485, 1399.486, 1399.487, 1399. 488, 1399.489, and 1399.489.1** - This proposed amendment clarifies and modifies continuing education requirements for licensees and providers.

Ms. Asplund called for testimony regarding sections 1399.480, 1399.481, 1399.482, 1399.483, 1399.484, 1399.485, 1399.486, 1399.487, 1399.488, 1399.489, and 1399.489.1 relating to continuing education (CE). She stated the Board has received three written testimonies. Two letters are in opposition to the provision limiting CE

hours granted in one day to eight hours and also elimination of the provision allowing instructors to receive credit for courses they teach.

PUBLIC COMMENT: Bill Mosca, Acupuncture and Integrated Medicine Specialists (AIMS): As the letters indicated, I would also like to add my voice to the opposition to the eight hour cap on continuing education units (CEUs) in a day. It appears to be, although I understand there was some process involved in establishing this set of regulations, it appears to be a rather arbitrary number. I am unaware of any other health care profession that has a daily cap on CEUs. I also am unaware of any research, for example, that would support an eight-hour cap. It just seems to me to be a rather arbitrary number. In our assessment, this regulation could potentially degrade the quality of CEU offerings in the state in that there are a number of very high quality offerings that do, in order to accommodate scheduling, that allow at least a single day of twelve hours. I can cite at least two examples of that. One would be the Natural Board of Acupuncture Orthopedics (NDAO) course, which is a three hundred-hour course, taught over the course of a year. There is also a similar course in western biomedicine that's geared towards acupuncturists. I believe that's also about three hundred-hours and both of those are scheduled such that the impact on practitioners is minimized. The impact primarily being time and money. As it is, practitioners need to take a Friday off in order to take that full weekend course. The classes begin mid-day on Friday, resume Saturday morning, run for twelve hours on Saturday, and then complete mid-day on Sunday. That allows time in the morning on Friday and the evening, the afternoon on Sunday for travel back and forth. Some people coming from across the state or, in fact, across the country in order to participate in those. This regulation would require those courses to be rescheduled...simply missing a single day in practice. Some practitioners may be forced to miss up to three days in order to participate in those. Those are some of the most popular and in high quality CEUs available and we would anticipate that participation would potentially drop off in those as the economics for individual practitioners to become feasible. There is also the additional cost of lodging, rather than just two nights, it is now four nights. So I would, I think with that exception this regulation would be acceptable. But I would certainly urge the Board to eliminate that cap, as I stated, it really, there is no comparable cap in any other health care profession that I am aware of. Thank you. **Joan Chang, Vice-Chair:** I have a question. So, if you are talking about twelve hours per day, so that would start by 8:00 a.m.? **Bill Mosca, Acupuncture and Integrated Medicine Specialists (AIMS):** I believe the classes start at 8:00 a.m. and let out at 9:00 p.m. **Joan Chang, Vice-Chair:** How about lunch and dinner? **Bill Mosca, Acupuncture and Integrated Medicine Specialists (AIMS):** I am not exactly certain of what the precise schedules are, but I know that, I think there may be eleven hours of actual credit time and then some lunch and dinner times scheduled in there. Maybe an hour. **Joan Chang, Vice-Chair:** 8:00 a.m. to twelve, that would be four hours, and if start at 1:00 p.m. to 6:00 p.m., that would be five, that would be nine hours. If another one hour for dinner. So start with 7:00 p.m. until 10:00 p.m. that would be a total of twelve hours. **Bill Mosca, Acupuncture and Integrated Medicine Specialists (AIMS):** Well, I think, my understanding is the way that they scheduled, and again I am not certain of this, is that the class begins at 8:00 a.m. and they conclude at 9:00 p.m. That is a thirteen-hour period and then there is a two-hour period for lunch and dinner combined and then, of course, the required ten-minute break per hour. Which would actually give, would be eleven total hours of credited hours. Which would still exceed the eight-hour requirement by three hours. **Joan Chang, Vice-Chair:** Thank you. **John Kolenda, L.Ac., Dean of ACTCM:** My comment is more on the increase of CE hours from thirty hours to fifty hours. I am a CEU provider; I've been in this business for close to twenty years. One of the greatest difficulties is actually finding quality CEUs. Even as a CEU provider, which I do provide to you courses from time to time, I would try to make sure that what I am providing is of quality. Everything that comes

across my desk, in terms of what's offered in CE, is really limited. It's not, it will be difficult to find fifty hours of quality CE. Again, I don't like the idea of having something forced for political reasons as opposed to being practical and truly acupuncture based reasons and that goes along with my objection with clean needle, I'm sorry, with single-use needle, as well.

LaVonne Powell, Legal Counsel: Can I stop you? It's thirty hours. **John Kolenda, L.Ac., Dean of ACTCM:** Oh, It is thirty hours? **LaVonne Powell, Legal Counsel:** I think there is a bill or something. **John Kolenda, L.Ac., Dean of ACTCM:** Oh, there is a bill? **Marilyn Nielsen, Executive Officer:** There is a legislative bill that, if it goes into affect, signed by the Governor. But our requirement is still only thirty and we're only addressing our requirement for thirty. **John Kolenda, L.Ac., Dean of ACTCM:** I see. And this also, this one has to do with the inclusion of drug-herb interaction? **Marilyn Nielsen, Executive Officer:** Yes. **John Kolenda, L.Ac., Dean of ACTCM:** Then let me address that. Thank you. Drug-herb interaction is a very, very important part. There is, to my knowledge, no scientific basis that proves what drugs interact to what herbs, especially when it comes to Chinese herbs. And you're extremely limited when it comes to herb formulas. There are no studies out there. It is a very difficult course to teach. There is probably one or two professors that do, that have a pharmacy background and they make some sort of connections that if you're doing this herb which ...nervous system, then ... the nervous system maybe of difficulty. But there is actually no proof that shows that. It's a very difficult thing to do. Even the medical profession. It's very difficult to show which drugs interact with other drugs. There is just a very, very scant amount of information that shows definitely that there are some difficulties. When it comes to herbs, that information is even thinner and is more based on speculation that it is on fact. So, in considering the delegation of the number of hours to be completed for drug interaction or whatever other cases, just be cognizant that there are, you know, there really isn't much information out there that's relevant. That's scientifically proven that has some good science and some good basics behind it. Again, the concept is good, but it just reeks of political manipulation rather than scientific or acupuncture based concepts. Thank you. **Tom Haines, Pacific College of Oriental Medicine (PCOM):** Many of you are aware of the Pacific's symposium that our college puts on for the last fifteen years. It's probably one of the better CE experiences for acupuncturists for some time, especially here in California. Our particular symposium has some days we go nine – nine and half-hours and this would really cause us a problem. Now, the effectiveness of the nine – nine and half –hours is dealt with the way we program our time. Where we get them out of their seat and move them around and they are simply not passive all the time. So, curtailing this to eight hours, to me, is working on the wrong end. You're working on the end of like, an example would be; education accounts hours for seat time rather than looking at competency. And I really think that in education we ought to be looking at outcomes, not how we got there in terms of seat time spent. I can spend eight hours in this meeting here and not pick up anything or I can spend three hours here and pick up a lot. So, it's not necessarily the time that is the crucial element. What is important is the education experience and how much of the time they are active and how much of the time they are required to think about it. So, curtailing this to eight hours would not only be injurious to the symposium but it would increase the amount of time that folks would have to be there. Which means more motel rooms and more time away from work. I think we are talking about adult education here. We've got students who go twelve hours a day and they seem to pass your examination for the most part. So, again, I don't think it is a time element, I think it is the quality of the education and how much the provider understands the basic principles of learning. OK? Thank you.

Board members agreed it is unnecessary to limit the amount of CE hours granted in one day to eight hours. Members also agreed not to delete language in section 1399.489, regarding CE credit given to instructors, which states: Instructors of approved CE courses may receive one

hour of CE credit for each classroom hour completed as an instructor, up to a maximum of two hours of CE credit per year, regardless of how many hours or courses are taught. Participation as a member of a panel presentation for an approved course shall not entitle the participant to earn CE credit as an instructor. The Board also discussed the need to stipulate an abandonment period to CE providers when a class needs to be cancelled or postponed. A decision was made to require a 48-hour notice from the date of the class to notify the Board if a course has been postponed or cancelled. If the course is not taught within three months of original course date, providers must reapply for course approval. Sections 1399.490 and 1399.491, requiring a minimum of 4 hours of drug/herb interaction upon renewal or license activation were approved.

**JOAN CHANG MOVED AND STEVEN TAN SECONDED THE MOTION TO ADOPT ORIGINAL PROPOSED LANGUAGE AS AMENDED AND PROPOSED AMENDED LANGUAGE AND PROCEED WITH A 15-DAY AMENDMENT NOTICE.
PASSED UNANIMOUSLY**

Board members discussed offering CE courses outside of the United States and determined approval could be granted if courses have been previously approved by the Board to be taught in California. After further deliberation, it was decided that a course would not be approved unless taught in identical form of a course previously approved by the California Acupuncture Board taught in the United States.

LARRY YEE MOVED AND KENNY CHERNG SECONDED THE MOTION TO APPROVE FOREIGN CE COURSES IF COURSES PREVIOUSLY APPROVED TO BE TAUGHT IN CALIFORNIA.

**AYES: STEVEN TAN
LARRY YEE
KENNY CHERNG
NOES: JOAN CHANG
SHARI ASPLUND**

LARRY YEE MOVED AND STEVEN TAN SECONDED THE MOTION TO RECONSIDER ORIGINAL VOTE REGARDING FOREIGN CE COURSES

**AYES: LARRY YEE
SHARI ASPLUND
KENNY CHERNG
STEVEN TAN
NOES: JOAN CHANG**

**STEVEN TAN MOVED AND LARRY YEE SECONDED THE MOTION THAT FOREIGN CE COURSES WILL ONLY BE APPROVED IF IDENTICAL COURSES WERE PREVIOUSLY APPROVED AND TAUGHT IN THE UNITED STATES.
PASSED UNANIMOUSLY**

6. Administrative Business – (Discussion/Action)

- a. Proposed Regulatory Amendment to Title 16, California Code of Regulations, Sections 1399.450, 1399.451, 1399.454, 1399.465, 1399.480, 1399.481, 1399.482, 1399.483,

1399.484, 1399.485, 1399.486, 1399.487, 1399.488, 1399,489, and 1399.489.1 from above Public Hearing under Agenda Item 5.

REFER TO MINUTE ITEM 5 a –c, TO READ DISCUSSION AND ACTIONS TAKEN BY THE BOARD REGARDING PROPOSED REGULATORY AMENDMENTS.

7. Public Comment Period:

Tom Haines, PCOM: Mr. Haines expressed the PCOM president Jack Miller’s concern regarding regulation 1399.436, which refers to clinical acupuncture training. Mr. Haines relayed Mr. Miller’s feeling of limitation due to the Board’s requirement that 75% of a student’s clinical practice must be completed in a clinic owned and operated by the school. His fear is that the regulation prohibits valuable experience students can obtain outside a clinic not owned by the college. He proposed the American College of Acupuncture and Oriental Medicine’s (ACAOM) language works very well and asked the Board to consider allowing students to gain knowledge and experience outside of a school clinic. He concluded by saying the issue should not be about ownership, but about equivalency of the clinical experience. Ms. Nielsen indicated she would add this issue to the Acupuncture Board’s December meeting agenda.

8. HEARING: PETITION FOR REINSTATEMENT

Petitioner: Christina Sook Un Gwak (Case No. PRRL-1A-2004-18)

9. HEARING: PETITION FOR REINSTATEMENT

Petitioner: Houshang Nakhai (Case No. PRRL-1A-2004-17)

10. HEARING: PETITION FOR REINSTATEMENT

Petitioner: Hung Hui Cheng (Case No. PRRL-1A-2005-128)

11. HEARING: PETITION FOR REINSTATEMENT

Petitioner: Kee Woon Song (Case No. PRRL-1A-2005-124)

12. Adjournment – The Acupuncture Board meeting adjourned approximately at 5:00 p.m.

<p>Full Board Meeting – Tuesday, August 23, 2005</p>

1. Call to Order and Establishment of a Quorum (S.Asplund, Chair)

Chair, Shari Asplund, called the Acupuncture Board meeting to order at approximately 9:15 a.m. Roll was taken and all members were present and a quorum was established.

2. Education Business – (Discussion/Action)

a. Status on Schools Implementation of 3,000-Hour Curriculum Requirements

Nancy Molinar, Education Coordinator, stated two schools, New York College of Health Professions and Seattle Institute of Oriental Medicine, have yet to respond to the Board’s written request of their curriculum for review. She stated the schools were in jeopardy of losing their approval and further indicated a student from New York was denied from taking the exam because his school had not responded. Ms. Molinar was directed by the Board to send a warning letter to the schools on official letterhead and send as registered mail.

b. Pending School Site Visits

Ms. Nielsen indicated the Board needed to establish site visitors and set a tentative date for November to visit East-West College of Natural Medicine in Sarasota, FL. The Board approved former board member, Lloyd Wright, L.Ac., to review the clinic portion of the site visit. The Board also set a tentative date for October to perform the site visit for Life University and board member, Kenny Cherng, L.Ac., was chosen to perform the clinical portion of this site visit. Ms. Nielsen relayed the board had received school applications from the following schools: Nobel University in Los Angeles, California Union University in Fullerton, Piedmont University in Anaheim, and Academy for Five Element Acupuncture in Hallandale, FL. On November 12, 2004, the Board corresponded with each of the schools and requested they submit, no later than December 31, 2004, a copy of their curriculum program and current catalog in compliance with the educational requirements defined in California Code of Regulations, Sections 1399.415, 1399.416, 1399.434, 1399.435, and 1399.436. Included in that correspondence was the Curriculum Requirement Form (CRF) which the schools needed to complete. Ms. Nielsen reported that the schools have not complied with this request. The Board decided, due to non-compliance and abandonment of the school application, to take action and voted to terminate the schools application process. A letter will be sent to each of the schools, notifying them of the Board's action.

3. Administrative Business – (Discussion/Action)

a. Fiscal Year End 2004/2005 Budget Reports

Ms. Nielsen declared her report concludes the 04/05 fiscal year and \$352,000 will be put back in the Board's reserve. She stated this amount is around a 2% reversion and is more than anticipated. She concluded the fiscal year ended with a surplus, not a deficiency.

b. SB 233 (Figueroa) - Board's Sunset Legislation

Ms. Nielsen indicated much discussion had transpired with Senator Figueroa but she doubts the vehicle to sunrise the board would be SB233, even though Senator Figueroa indicated she would like to carry the bill to sunrise the board. Michele Lau, with the Council of Acupuncture and Oriental Medicine Associations (CAOMA), informed the Board that CAOMA is trying to compromise with the Senator. Ms. Lau indicated she is extremely frustrated and feels things have been unfair because the Board has been doing a great job. Negotiations with the Senator include a reconstitution of board members and the executive officer, giving the Department of Consumer Affairs the ability to approve the next executive officer. Ms. Lau stated if the profession and the Senator come to an agreement, the Senator will then carry the bill to sunrise the Board. Ms. Lau had met with the Senator the previous day and feels they are drawing closer to a resolution and relayed that CAOMA had a very successful rally at the Capitol the previous day as well. Ms. Nielsen indicated that current board members could reapply as new board members and reminded everyone that if the profession accepts the sunset, the board would become a bureau, which only weakens the profession's voice. Ms. Nielsen feels the profession needs to compromise now to ensure the board survives. This would guarantee the profession still has representation in the future. She clarified, regardless of the outcome, whether the Board is to become a bureau or remain a board, all laws and regulations will remain in effect and licensees will still be regulated by the state of California.

c. 2005 Legislative Bills and Any Other Bills that May Be of Interest to the Board

1. AB 1113 (Yee) - Diagnosis

Ms. Nielsen updated members on the progress of AB1113(Yee), saying the bill has sailed through the Assembly with a 9-1 vote and is currently waiting on the Senate floor's vote. She

cautioned members that if the bill were passed through the Senate, it would still need to be signed by the Governor to take affect.

2. AB 1114 (Yee) – Continuing Education

Ms. Nielsen reminded members AB1114(Yee) would increase the continued education requirement from thirty hours every two years to fifty hours. She indicated the bill has passed through the Senate Business and Profession on a 5-1 vote, was twenty-eight-eighted through Senate Appropriations, meaning it was bypassed through this committee, and is now pending the Senate vote.

3. AB 1115 (Yee) - Acupuncture Assistants

Ms. Nielsen stated AB1115(Yee), authorizing the use of acupuncture assistants, has passed the Senate Business and Profession with a 4-1 vote and is progressing on to the Senate floor vote.

4. AB 1116 (Yee) - Postgraduate Residency

Ms. Nielsen reported AB1116(Yee), which dealt with postgraduate residency, has failed to pass at the Senate Business and Profession with a 0-4 vote and is no longer a bill that would affect the profession.

5. AB 1117 (Yee) – Asian Medicine

Ms. Nielsen explained AB1117(Yee), which would require changing the term “Oriental Medicine” to “Asian Medicine”, has passed with a 6-0 vote at the Senate Business and Professions and is pending the Senate floor vote.

4. Examination Business – (Discussion/Action)

a. August 17, 2005 California Acupuncture Licensing Examination (CALE)

Christie Loftin, Examination Coordinator, reported the August 17, 2005 California Acupuncture Licensing Examination (CALE) had one of the largest turnouts to date. 617 candidates - 371 English speaking, 174 Chinese speaking, and 142 Korean speaking - had taken the exam in Sacramento, making this 120 more candidates than usual. She indicated results would be mailed out thirty days from the exam date.

b. Tracy Montez, Ph.D., and Linda Hooper, Ph.D., Department of Consumer Affairs, Office of Examination Resources – Regarding the CALE

Dr. Montez was unable to attend the meeting. Ms. Hooper presented a power point presentation to the members, informing them of the duties and processes in which the Department of Examination Resources (OER) go through in preparing and grading the exam.

5. Public Comment Period:

Tom Haines, PCOM: Mr. Haines inquired whether schools could receive more detailed feedback regarding the exam performances of their students. He indicated the schools receive a curriculum performance report broken down into nineteen categories and wished for more disclosure in order to ensure they are teaching subjects that are on the exam. Mr. Hains also recommended the Board put a cap on how many times an examinee is allowed to take the exam. LaVonne Powell, Legal Council, warned that by giving out the information Mr. Hains’ is requesting it could be construed as “teaching to the exam” which schools are not allowed to do.

Benjamin Yang, United California Practitioners of Chinese Medicine (UCPCM): Mr. Yang stated, in reference to Ms. Hooper’s earlier presentation in which she indicated examinees who know the traditional form of Chinese characters would likely know the simplified characters, that

a person who knows the traditional Chinese characters would not necessarily know the simplified characters.

John Kolenda, L.Ac., Dean of ACTCM: Mr. Kolenda requested the Board desist from giving the actual passing score to examinees who pass the exam. But rather simply indicate they had passed on the result letter. He asked the Board to notify examinees and schools sooner when a book is removed or added to the reference book list and concluded he would like to see a formal appeal process put in place for examinees.

6. CLOSED SESSION: Pursuant to Government Code Section 11126(c)(3) to discuss/take action on disciplinary actions.

7. Adjournment – The Acupuncture Board Meeting adjourned at approximately Noon.